

APPEAL NO. 040617  
FILED MAY 11, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 7, 2004, and February 24, 2004. The hearing officer determined that the average weekly wage (AWW) of appellant (claimant) is \$320.00 and that claimant is not entitled to lifetime income benefits (LIBs). Claimant appealed these determinations on sufficiency grounds. Claimant also contends that he was not permitted to present evidence regarding the AWW. Respondent (carrier) responded that the Appeals Panel should affirm the hearing officer's decision and order. Claimant filed another document on April 23, 2004, that was not timely as an appeal.

DECISION

We affirm.

Claimant contends that he was prevented from presenting evidence regarding the AWW. The record does not reflect that claimant was not permitted to obtain or present evidence. Claimant contends the hearing officer erred in determining that his AWW is \$320.00. The applicable law is stated in Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 128.3(e) (Rule 128.3(e)). Claimant was a full-time employee who worked less than 13 weeks before his injury. There was no evidence regarding a similar employee at the employer's business, or regarding a similar employee who performed similar services in the same vicinity. The hearing officer applied the "fair, just, and reasonable" method and determined that the AWW is \$320.00 because claimant had earned \$8.00 per hour working 40 hours per week in the weeks before he was injured. We perceive no error.

Claimant contends the hearing officer erred in determining that he is not entitled to LIBs. He contends that the condition of his legs is such that it keeps him from getting and keeping employment requiring the use of his legs. The applicable law is stated in Section 408.161; Texas Workers' Compensation Commission Appeal No. 022129, decided October 3, 2002; and Texas Workers' Compensation Commission Appeal No. 021601, decided August 15, 2002. We have reviewed the complained-of determinations and conclude that the issues involved fact questions for the hearing officer. The hearing officer reviewed the record and decided what facts were established. We conclude that the hearing officer's determinations are supported by the record and are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the hearing officer's decision and order.

According to information provided by carrier, the true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**MR. RUSSELL R. OLIVER, PRESIDENT  
221 WEST 6TH STREET  
AUSTIN, TEXAS 78701.**

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Judy L. S. Barnes  
Appeals Judge

CONCUR:

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Daniel R. Barry  
Appeals Judge

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Edward Vilano  
Appeals Judge